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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) MM Docket No. 97-138
Review of the Commission's Rules)
Regarding the Main Studio and)
Local Public Inspection Files of)
Broadcast Television and Radio Stations)

COMMENTS OF AMERICAN RADIO SYSTEM CORPORATION

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SUMMARY

American Radio Systems Corporation ("American"), which, through its subsidiaries, is the licensee of over ninety radio stations, endorses the Commission's efforts to modify the main studio rule and the public inspection file rules. American believes that relaxation of various aspects of these rules will permit broadcasters to redirect resources into improved programming and enhanced public service without adversely affecting interaction with the public.

American submits that the Commission should modify the main studio rule to permit the location of a station's main studio at any reasonably accessible point within the radio market, as defined by Arbitron. Such a rule would be consistent with marketplace realities and would remove the current inequities that result from the use of principal community contours as the key determinant for main studio location.

The Commission should also amend its public inspection file rule. In particular, the public file rule should require the location of the file at the main studio, wherever located. The rule should no longer require broadcasters to maintain outdated and unnecessary materials that pertain to the qualifications of a previous owner. Finally, the Commission should use this opportunity to recognize the similarities between e-mail and telephone messages from the public and reject a proposal set forth in its Notice of Proposed Rule Making in this proceeding calling for broadcasters to place in their public files e-mail messages from members of the public.

Together, these rule modifications will ensure the continued accessibility of radio stations to local listeners while allowing broadcasters to achieve substantial operational efficiencies that will translate into improved issue-responsive programming and enhanced public service.

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COMMENTS OF AMERICAN RADIO SYSTEMS CORPORATION

American Radio Systems Corporation ("American"), by its attorneys, submits herewith its comments on the *Notice of Proposed Rule Making* concerning revision of the Commission's regulations pertaining to the main studio and local public inspection files of broadcast television and radio stations.¹ American, which, through its subsidiaries, is the licensee of over ninety radio stations, fully supports the Commission's interest in relaxing the main studio and local public inspection file rules for commercial radio stations. Relaxation of many aspects of these rules, as proposed by the Commission, would be in the public interest because it would afford broadcasters greater "flexibility . . . while at the same time ensuring . . . interaction between licensees and their local communities."²

¹ *Notice of Proposed Rulemaking* in MM Docket No. 97-138, FCC 97-182 (rel. May 28, 1997), 62 Fed. Reg. 32061 (June 12, 1997) ("*NPRM*").

² *See id.* at ¶ 3.

I. Broadcasters Should Be Allowed To Locate a Station's Main Studio at Any Accessible Site Within the Radio Market.

The Commission adopted the main studio rule, 47 C.F.R. § 73.1125(a), to ensure that broadcast stations would provide local service to their communities of license.³ The Commission originally required location of the broadcast main studio within a station's community of license in order to ensure that a station would be accessible to community residents. Location within the community of license also was thought to facilitate the broadcaster's exposure to "daily community activities," which, in turn, would enable the broadcaster to identify and respond to community needs and interests in fulfillment of its community service obligations.⁴

The Commission relaxed the main studio rule ten years ago, permitting licensees to locate their main studios within their stations' principal community contours. In adopting the liberalized rule, the Commission relied upon a number of changes in the broadcast industry in particular and in society in general.⁵ Specifically, the Commission cited the decrease in the amount of programming originated from main studios, the infrequency of public visits to studios, the ease of contacting studios by telephone or mail, and the efficiencies available from collocating main studios with other station facilities. Each of these factors remains true today, if not more so.

³ *Id.* at ¶ 4.

⁴ *Id.*

⁵ *Id.* at ¶ 5, citing *Report and Order, Amendment of Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 2 FCC Rcd 3215, 3217-18 (1987) ("*Main Studio and Program Origination Report and Order*").

Since 1987, the central role of main studios in programming production has continued to decline as radio stations increasingly utilize remote broadcasting locations and offer more satellite-delivered programming services.⁶ It is also easier today to contact a station by mail, facsimile, telephone, and even electronic mail, obviating the need for personal visits.⁷ Moreover, in the last ten years, the Commission has relaxed its local radio ownership rules twice, most recently at the direction of Congress.⁸ Today, in large markets, a single entity may own up to eight radio stations in one market, and, as the Commission itself has recognized, the opportunities for realizing economies of scale from owning multiple radio stations in the same market and reinvesting the savings in improved public service have grown considerably since the last time modification of the main studio rule was addressed.⁹

⁶ The Commission took notice of a trend away from locally produced programming when it revised the main studio rules in 1987. *See Main Studio and Program Origination Report and Order*, 2 FCC Rcd at 3218.

⁷ When personal visits are necessary, such as when listeners need to pick up prizes, entry blanks, or promotional items, American's general managers report that they have never received a complaint about studio accessibility.

⁸ *See NPRM* at ¶ 8, *citing Order*, 61 Fed. Reg. 10689 (March 15, 1996); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); and *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992), *on recon.*, 7 FCC Rcd 6387 (1992), *on further recon.*, 9 FCC Rcd 7183 (1994).

⁹ *See NPRM* at ¶ 8; 47 C.F.R. § 73.3555(a)(1). When the Commission relaxed the radio ownership rules and policies in 1992, it recognized that efficient station operations inherently lead to improved public service and thus have significant, "tangible" public interest benefits. In particular, the Commission observed that the ownership of two same-service radio stations in the same market enabled multi-station owners to "obtain the substantial efficiencies that common ownership can provide. These efficiencies include the opportunity to 'combine administrative, sales, programming, promotion, production and other functions as well as to share studio space and equipment.'" *Report and Order in MM Docket No. 91-140*, 7 FCC Rcd 6387, 6388 (1992).

In the last decade, the radio industry has also witnessed a proliferation of FM radio stations of varying classes as a result of the Commission's changes to its FM rules in Docket 80-90 and other proceedings. As the Commission recognized in the *NPRM* in this proceeding, the widely varying sizes of principal community contours for stations of different classes have yielded great disparities in the size of the areas in which stations licensed to the same communities may locate their studios.¹⁰ If the use of principal community contours once served as a valid proxy for main studio accessibility, the proliferation of FM radio stations of different classes has rendered this surrogate a modern anachronism. Today, principal community contours bear no relation to the ease with which the public can travel to the studio. The use of stations' contours as the key determinant for the location of radio main studios should now be abandoned.

American urges the Commission to adopt a relaxed main studio rule that can be "clearly and easily understood and applied" and, at the same time, permits broadcasters to realize the significant efficiencies that would result from such relaxation.¹¹ In American's view, the new rule should permit radio broadcasters to locate their stations' main studios at any reasonably accessible site within the geographic boundaries of their radio markets, as determined in accordance with the Arbitron radio market definitions.¹² Under this proposal, virtually every

¹⁰ See *NPRM* at ¶ 9.

¹¹ See *id.* at ¶ 14.

¹² In 1992, the Commission elected to use a contour test instead of Arbitron's methodology to define a radio market for the purpose of the multiple ownership rules, and American does not suggest now that the Commission should revisit that decision. See *Revision of Radio Rules and Policies*, 7 FCC Rcd 2755 (1992), *on recon.*, 7 FCC Rcd 6387 (1992), *on further recon.*, 9 FCC Rcd 7183 (1994). American submits, however, that the commercial realities associated with main studio site selection are sufficiently different from the multiple ownership rules' focus on

broadcaster would enjoy greater flexibility in choosing a site that accommodates the needs of a radio station's community of license, while also recognizing commercial realities and permitting the broadcaster to achieve more efficient operations based on such realities.¹³ Such a commercially accepted and widely available market definition as that adopted by Arbitron would provide clear and easy direction to licensees and their station managers. For example, a station manager searching for a new studio location could easily refer to Arbitron's materials to determine the area in which to focus the search; there would be no need to commission a new engineering study for this purpose. Real estate agents and commercial rental brokers would more easily understand a concept based generally on county boundaries than on engineering principles. Arbitron's definition is also more likely to delineate the true boundaries of commercial activity, and, therefore, the actual location of offices of the governmental and business representatives with whom station personnel would want to interact.

The new rule also should permit multiple-station, single market owners to consolidate the facilities of all of co-owned stations in the same market. Under the current contour-based rules and Commission standards governing an "adequate managerial and staff presence,"¹⁴ some

ensuring diversity in radio signals that a different, non-contour based standard is appropriate in Section 73.1125.

¹³ In the *NPRM*, the Commission observed that even several commenters in the 1987 proceeding had remarked on how a location *outside* of the principal community contour actually may be more reflective of marketplace realities. In some cases, location outside a specified contour was more convenient to community residents due to the particular location's easier access to main highways and public transportation and the greater availability of adequate parking at that site. See *NPRM* at ¶ 10.

¹⁴ *Main Studio and Program Origination Report and Order*, 2 FCC Rcd 3215, 3217-18, on recon., 3 FCC Rcd 5024, 5026 (1988). See also *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992), *aff'd* 10 FCC Rcd 3759 (1995). These standards require that each separate facility maintain program origination capability and be

multiple owners are required to maintain duplicative facilities within the same radio markets or metropolitan areas. American's proposed collocation rule would enable multiple-station owners to redirect the resources now allocated to the costly fixed expenses of operating multiple sites to improved programming and increased public service activities. Centralizing the employees of several radio stations also would enable station staff to collaborate more on programming, research, marketing, promotion, administration and other tasks than is possible under a regime in which the employees are scattered throughout the market. Moreover, curtailing travel between studios for a broadcaster's employees would represent additional monetary and time savings. As a result of these additional savings, broadcasters could operate more efficiently and reinvest the cost savings in enhanced programming and public service activities.

Permitting the location of a radio studio at a common site within the radio market would not adversely affect station accessibility. As the Commission itself observed ten years ago, the increasingly complex and advanced transportation infrastructure permits travel over greater distances in less time than was possible when the Commission first adopted the main studio rule.¹⁵ Collocation would enable members of the public to visit all of a licensee's stations at one location. Similarly, this proposal would benefit the firms and individuals who contract or confer with radio station personnel on a regular basis. Centralization of operations at one location would enable these persons to consolidate multiple sales calls, meetings, and deliveries into a single visit.

staffed by at least one managerial and one non-managerial employee.

¹⁵ See *Main Studio and Program Origination Report and Order*, 2 FCC Rcd at 3217-18.

Furthermore, relaxing the main studio rule as proposed herein is unlikely to inaugurate a mass exodus by radio broadcasters to the distant, remote, and isolated outskirts of a community merely to find cheaper real estate. In fact, the opposite is true: broadcasters, in order to remain competitive with other advertising media and employers, must locate their facilities in accessible locales.¹⁶ Gearing a studio's location to market realities, as reflected by the Arbitron definition, and then locating the studio near major thoroughfares and centers of commercial activity would help increase public access, coverage of local news and community affairs, and interaction with firms that conduct business with broadcast stations. The Commission should modify its main studio rule to offer broadcasters increased flexibility by permitting the location of a main studio at any accessible site within a radio station's market, as defined by Arbitron.¹⁷

II. The Public Inspection File Should Be Maintained at the Main Studio, Wherever Located.

The purpose underlying the broadcast station public inspection file rule, 47 C.F.R.

¹⁶ In comments submitted on the petitions for rule making that resulting in this *NPRM*, Minority Media in Telecommunications Council also noted that a relaxed main studio location requirement would facilitate access to the main studio for minority citizens. *NPRM* at n.12.

¹⁷ American also believes that use of Arbitron market boundaries to define permissible main studio locations will also be administratively simple for the Commission to enforce. Concerns or questions about compliance may be resolved by quick consultation of industry guides rather than engineering records that may be incomplete or outdated or special studies that licensees may have to commission. On infrequent occasions, Arbitron boundaries may change, but such revisions are no more likely to occur than station facilities changes that would also modify a station's studio site selection area if the current principal community contour standard were retained. In the event of boundary changes, licensees seeking to establish new studio locations should have to comply with the revised standards, but any existing studio locations should be grandfathered, as would likely be the case no matter what definitional standard were selected.

§ 73.3526, is to ensure that stations are responsive to the needs and interests of their local communities.¹⁸ Under this rule, a commercial broadcast station must maintain its public inspection file at its main studio (or other accessible place in the community of license if the studio is located outside the community) in order to facilitate public "monitoring of [the] station's operations and public interest performance."¹⁹ American strongly endorses the Commission's proposal to amend its rules in order to permit a commercial station to locate its public inspection file at its main studio, wherever located.²⁰

A broadcast station's main studio is the most prudent and practical location for the public inspection file. Members of the public interested in monitoring the station's performance logically expect to find the file at the main studio because telephone and other local directories list the address and telephone number of the main studio rather than a separate document depository. Indeed, American managers report that some public visitors to stations with studios located outside their community of license, and, therefore, with public files situated at off-site locations, have been surprised to learn that the public inspection file was not at the studio. Many of these stations also incur unnecessary expenses by maintaining a dual set of their public files at both the studio and at an off-site location such as a public library. Because off-site locations typically are not staffed by station employees, broadcasters frequently have concerns about the accuracy and integrity of those distant public files.

¹⁸ See *id.* at ¶ 17.

¹⁹ See *id.*; 47 C.F.R. § 73.3526(d).

²⁰ See *NPRM* at ¶ 20.

Maintaining the file at the studio would place the file under the direct daily supervision of the station's employees. This would enable the station's staff to ensure the integrity and accuracy of the local public inspection file and to update and review the file more quickly. With such a change, those needing assistance to review the file would be able to count on the immediate assistance of station personnel. Finally, potential economies of scale could be realized by those broadcasters able to collocate the studios of multiple stations in the same market and centralize public inspection file responsibilities under one employee. In short, the public would be better served if the Commission amends its rules to authorize the location of the public file at a commercial broadcast station's main studio, wherever located.

American objects to the suggestion of Salem Communications Corp. ("Salem") that a broadcaster be required to deliver public file documents to a requestor. This suggestion would place undue regulatory burdens on licensees. Most visitors inspecting public files are not schooled in the requirements of the rule and, upon arrival, do not know precisely what to request. Once the visitors spend time isolating the documents in which they are interested, American and other broadcasters are obligated to make copies available. With adoption of Salem's proposal, American anticipates that its employees will be faced with imprecise and vague requests for documents from individuals not aware of exactly what they are trying to obtain. Moreover, Salem's proposal would deny an individual the luxury of being able to survey additional documents in the public file that he or she otherwise might not know to request. Requiring stations to interpret requests, copy the documents, and then deliver them would not only turn broadcasters into research firms but would also encourage frivolous requests since all that would be required of the requester is to pick up the telephone and place a call.

In addition, American objects to Salem's proposal that a broadcaster be required to provide free transportation to a requestor. Such a rule also would be subject to tremendous abuse. Given broadcasters' interest in locating their studios in and near commercial centers, any entitlement to free transportation easily could be used as a widespread commuter subsidy for workers in the station's neighborhood. Broadcasters would be powerless to police the practice because it would be difficult to ferret out the sincere requestor from the "free loader" until after the abuses had occurred.²¹ Locating the public inspection file at a reasonably accessible site provides sufficient guarantees that a sincere requestor will be able to inspect the station's public file without extreme effort. Accordingly, a free transportation guarantee is unwarranted.

III. New Licensees Should Not Be Required To Maintain Outdated Material in the Public Inspection File.

American urges the Commission to modify the public file obligations of new owners of radio stations. Currently, an assignee or transferee must retain and make available all of the public file materials that the previous owner was required to maintain, including the former licensee's ownership reports, issues/programs lists, and EEO filings. Many of the former owner's materials, however, are irrelevant to the new owner's qualifications. Under the Commission's local public notice rule and the thirty-day statutory hold on the processing of applications involving a substantial change in ownership, members of the public are given notice and an opportunity to review documents relevant to the qualifications of station sellers and make objections prior to grant of the assignment or transfer. There is no legal justification for

²¹ Preventing such abuses would require Commission micro-management, for instance through a mandated limit on the number of free trips per year.

requiring new owners to retain materials relevant to the former owners' qualifications after the grant. The requirement is both unnecessary and wasteful of licensee resources. Accordingly, the Commission should relieve new owners of the burden of maintaining licensee-specific materials that relate to the previous owners' period of ownership.

IV. Licensees Should Not Be Required To Maintain E-Mail Messages in the Public Inspection File.

The use of electronic mail ("e-mail") to convey brief, informal messages is proliferating. Messages composed on e-mail, unlike traditional mail, require very little time and even less money to transmit than traditional mail. As such, e-mail messages resemble telephone calls more than written mail.²² The volume of e-mail sent to a radio station from members of the public is likely to reach incredible proportions in coming years. In addition, e-mail messages typically bypass a centralized mail handler (such as a station receptionist who opens the mail). Indeed, numerous e-mails are sent to various station personnel throughout the day. As a result, it will become exceedingly burdensome for a licensee to monitor the existence and content of all e-mail messages sent to the station to ensure that those that include comments from the public on station operations are routed to the public file.²³ Accordingly, the Commission should recognize the distinctions between e-mail and traditional mail by amending its public inspection file rule to

²² Currently, telephone messages, unlike written mail, need not be recorded in the public inspection file. *See* 47 C.F.R. § 73.1202.

²³ Employee e-mail can be subject to legal and technical workplace privacy protections that prevent the opening of e-mail messages by anyone other than the recipient. This problem is exacerbated by the fact that virtually all radio stations contract with an independent third party to maintain their e-mail systems and internet access. Consequently, it is more difficult for some licensees even to determine the existence of particular e-mail messages sent to station employees.

clarify that e-mail messages do not need to be downloaded, printed, reviewed by station management, and maintained in the public file.²⁴

V. Conclusion

American applauds the Commission's efforts to relax the main studio rule and the public inspection file rules. The Commission should modify the main studio rule to permit the location of a station's main studio at any reasonably accessible point within the radio market, as defined by Arbitron. The Commission also should amend its public inspection file rule to permit the location of the public inspection file at the main studio, wherever located. The Commission should clarify its public inspection file rule to remove the obligation to maintain outdated and unnecessary materials that pertain to the qualifications of a previous owner, and it should not add

²⁴ American submits that a mandated requirement that stations place their entire public inspection file on a computer web site would also present expensive and cumbersome obligations for many broadcasters because few, if any, of the materials exist in electronic form.

a new requirement to its rule that e-mail messages from the public be added to the public file.

These rule modifications will ensure radio stations' continued accessibility to local listeners

while allowing broadcasters to achieve substantial operational efficiencies that will translate into improved public service.

Respectfully submitted,
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